

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3893 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

NATWARLAL B PARIKH

Versus

AHMEDABAD MUNICIPAL CORPN

Appearance:

MR KB PADIA for Petitioner

Ms. Nidhi B Jani for Mr SN SHELAT for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 08/12/2000

ORAL JUDGEMENT

The petitioner, above named, has preferred this petition before this Court in view of the provisions made under the Gujarat Town Planning and Urban Development Act, 1976. Facts of the case may be briefly stated as

follows:

That one Achalsingh Fulsingh was the owner of a plot in survey no.505, near Octroi Tol Naka, Vadaj since 1971 as per the case of the petitioner. That a shop was built on the said plot and it was let to the father of the petitioner in 1971. That thereafter, on or about 4.7.1978, the said plot with shop was sold by Achalsingh to the father of the petitioner under a sale deed. The petitioner claims that he was running a hair cutting saloon in the said shop till the deceased father died in the year 1984. That thereafter, the petitioner has been occupying the said shop as an owner thereof and, has been running his Hair Cutting Saloon as "Rajesh Hair Art". It is further contended that a notice was issued to the petitioner for vacating the said land and for handing over possession of the said land for the purpose of widening the road. That some litigations were going on against the respondent Corporation.

2. The petitioner claims that in writ petition bearing Special Civil Application No.4766/91 filed by the petitioner, an order was passed by this Court on 19.8.1991, under which the respondent Corporation was agreeable to allot an alternative site to the petitioner. That on the basis of the said agreement and undertaking by the respondent Corporation, the petitioner did not press that petition and it was accordingly disposed of by this Court on 19.8.1991. Thereafter, the petitioner, time and again, approached the respondent for allotment of alternative site but the same was allotted to him. Therefore, the petitioner has filed this petition for appropriate writ, order or direction to allot alternative site to the petitioner in accordance with the order of this Court dated 19.8.1991.

3. On submission of the petition, notice was issued at the first instance and thereafter, rule was issued. The respondent has appeared. It has filed affidavit-in-reply of Mr Mahendra F Shah, Dy.Estate Officer of the respondent Corporation at page 17. Certain documents have also been produced along with the said affidavit-in-reply by the respondent. Thereafter, the petitioner has also filed subsequent affidavit-in-rejoinder which has also been taken on record.

4. I have heard Mr K B Padia, learned Advocate appearing for the petitioner and Ms. Jani, learned Advocate appearing for Mr S N Shelat on behalf of the respondent. They have taken me through the records

including the affidavit and documents which have been submitted along with the petition.

5. Mr K B Padia, learned Advocate for the petitioner has mainly argued that the petitioner was at all points of time in possession of the aforesaid property, and as per the order dated 19.8.1991 of the Court, the respondent Corporation was required to consider the case of possession in respect of the land in question as on 31.12.1975. That the petitioner was in possession in respect of the said land on 31.12.1975 and, therefore, the petitioner was entitled to allotment of alternative site on the strength of the aforesaid order of this court recorded in the aforesaid Special Civil Application No.4766/91. For ready reference, the order of this Court dated 19.8.1991 may be reproduced hereunder:

"On notice being issued by this Court, Mr Tripathi, for Ahmedabad Municipal Corporation has filed appearance and submitted the purshis in this Court. As per the said purshis, the petitioner is required to make representation to the respondent-Corporation along with proper evidence showing that he was in possession of land prior to 31st December, 1975. It is also stated that in case the petitioner is in a position to show his possession upto 31st December, 1975 or prior thereto, alternative site shall be provided to the petitioner. It is further stated that till 30th November, 1991, the petitioner shall not be forced to remove from the place where he is carrying on business. On such statement being made, Mr B H Mehta seeks permission to withdraw this petition. The petitioner is directed to make representation to the respondent Corporation and the respondent Corporation is directed to decide the same within a month from the date of receipt of such representation. Subject to the aforesaid directions, the petition stands disposed of as withdrawn. Notice is discharged. No costs."

6. On the strength of the above order, learned Advocate for the petitioner has time and again submitted that the petitioner was in possession of this land as on 31.12.1975, and therefore, he is entitled to possession of the said property.

7. On the other hand, in the affidavit filed by the respondent Corporation, it has been specifically stated on oath at page 18 as under:

"Babubhai Mohanbhai Pithadia was occupying shed

No.53. In accordance with the resolution passed by the Standing Committee, it was agreed to provide an alternative site to those who were occupying the street land for T.P. Scheme No.28, Final plot no.562 and it is reserved for slum clearance. Annexed hereto and marked Exh.'B' (colly.) are copies of the resolutions passed by the Standing Committee dated 10th December, 1987 and 9th November, 1989. Said Babubhai Pithadia has been offered alternative accommodation. Babubhai Pithadia was also informed about the grant of alternative accommodation. Petitioner was also informed by letter dated 16th January, 1989 that he was not entitled to any alternative accommodation, since alternative accommodation is available to a person who has lost his business as a result of the T.P. Scheme. Petitioner was not in occupation of any shed. The claim made by the petitioner on the basis of the resolution dated 28th July 1976 also cannot be entertained."

8. From the bare reading of the aforesaid affidavit, it is very clear that the respondent has specifically stated that the petitioner was not in possession of the land at the relevant time and the said Babubhai Mohanbhai Pithadia was shown to be in possession of the said shed No.53.

9. For the said purpose, the respondent has submitted a document dated 21.7.1988 at page 20. There, the petitioner himself has stated that the aforesaid land has been let by him to one Babubhai Pithadia. It is however, contended that though the shop has been let to Babubhai Pithadia, alternative land cannot be given to him. Therefore, admission of the petitioner that the petitioner was not in possession in respect of the said land at the relevant point of time and that the said property was in possession of Babubhai Pithadia was there with the respondent, then it would be worthwhile to refer to a Resolution No.1789 filed at page 21. It has been made clear in it that the persons earning livelihood and whose possession has been taken away, may be allotted land in accordance with the terms and conditions of the said Resolution. Therefore, the lands were ordered to be allotted in accordance with the terms and conditions of the Resolution. Mr K B Padia, learned Advocate argued that the petitioner was in possession of the shop at the relevant point of time. It is true that an affidavit has been filed in support of the said contention. At the

same time, there is documentary evidence to show that the petitioner has parted with possession and it was let to one Babubhai Pithadia. The respondent has come out with a case that alternative space has been allotted to Babubhai Pithadia on the aforesaid document as well as on the strength that the said Babubhai was found to be in possession of the land at the relevant point of time. The respondent has also submitted copy of a letter dated 5.9.1994 at page 23 addressed to the petitioner showing that the aforesaid shop was in possession of Babubhai Pithadia. Therefore, an offer has been made to Babubhai Pithadia for allotment of the land as an alternative site to be provided to him. It is further made clear in the said letter that the petitioner as well as Babubhai Pithadia, both could not be provided with land.

10. Therefore, on the one hand, the petitioner has come out with the case that at the relevant point of time, he was in actual physical possession of the aforesaid shed no.53. On the other hand, respondent has come out with a case that the petitioner was not in possession thereof, but one Babubhai Pithadia was in possession thereof. The respondents' contention has been supported by the aforesaid documentary evidence. It is not the case of the petitioner that the said letter at page 20 dated 21.7.1988 was not written by the petitioner and it has been got up or fabricated by some one. The respondent has submitted copy of a letter dated 5.9.1994 at page 23 referred to above. There is no reply to the said letter in the affidavit of the petitioner. Now, when the parties have come out with their cases with regard to possession of the said land and when there is disputed question of fact as to who was in possession of the said land at relevant point of time, then in that case it is not open to this Court to go into the disputed question of facts with respect to possession of the said property at the relevant point of time. The respondent's case has also been supported by some documentary evidence coupled with affidavit on record. It, therefore, cannot be said that it was the petitioner, who was in possession of the said shed at the relevant point of time. In the facts and circumstances of the case, in my opinion, it cannot be said that the respondent has not acted in accordance with the direction contained in the order of this court dated 19.8.1991, which may not be accepted by the petitioner. But nevertheless, the action of the respondent cannot be illegal, unreasonable or vulnerable. In that view of the matter, the court cannot direct the respondent to allot land to the petitioner when the land has already been allotted to Babubhai Pithadia. Two persons cannot be provided with alternative sites. In

the aforesaid view of the matter, I am of the view that the respondent's action cannot be challenged and it cannot be found to be illegal, unreasonable and consequently, the petitioner cannot be said to be entitled to any relief from this court. It is moreso, when there is disputed question of fact about the possession of the aforesaid land at the aforesaid point of time, which may not be entertained in this writ petition when the Court has to exercise its powers under Article 226 of the Constitution of India.

11. In the facts and circumstances of the case, there is no merit in the present petition and the petitioner is not entitled to alternative site. The petition is, therefore, accordingly, required to be dismissed. It is accordingly dismissed. Rule is discharged. Interim relief stands vacated. No order as to costs.

08.12.2000 [D P Buch, J.]

msh